

Westlaw

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TEXAS BILL TEXT

VERSION: Adopted

May 19, 2005
Janek, Nelson, Nixon, Rose

S.B. No. 15
AN ACT
relating to civil claims involving exposure to asbestos and silica.

TEXT:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. FINDINGS; PURPOSE. (a) The Legislature of the State of Texas makes findings as stated in this section.

(b) Asbestos is a mineral that was used extensively in industrial applications, especially between the 1940s and the 1970s. It is estimated that as many as 27 million American workers were exposed to asbestos between 1940 and 1979. Exposure to asbestos, particularly through inhalation of asbestos fibers, has allegedly been linked to certain malignant and nonmalignant diseases, including mesothelioma and asbestosis. These diseases have latency periods of up to 40 years.

(c) Over the last three decades, hundreds of thousands of lawsuits alleging asbestos-related disease have been filed throughout the United States. In the early 1990s, between 15,000 and 20,000 new lawsuits alleging asbestos-related disease were filed each year. By the late 1990s, the number of new lawsuits alleging asbestos-related disease filed each year was more than double the number of yearly filings seen in the early 1990s. By one estimate, the number of asbestos lawsuits pending in state and federal courts in the United States doubled in the 1990s, from approximately 100,000 to more than 200,000 claims.

(d) In 1991, the Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by United States Supreme Court Chief Justice William Rehnquist, found that 'the [asbestos litigation] situation has reached critical dimensions and is getting worse.' In 1997, the United States Supreme Court acknowledged that the country was in the midst of an 'asbestos-litigation crisis.' *AmChem Products, Inc. v. Windsor*, 521 U.S. 591, 597 (1997).

(e) Texas has not been spared this crisis. In the period from 1988 to 2000, more lawsuits alleging asbestos-related disease were filed in Texas than in any other state. Thousands of asbestos lawsuits are pending in Texas courts today.

(f) This asbestos litigation crisis is due, in part, to screening of persons with possible occupational exposure to asbestos and to the existence of statutes of limitations that begin to run based merely on knowledge of a possible asbestos-related disease or symptom. The screening process identifies individuals with radiographically detectable markings on their lungs that are consistent with asbestos-related disease regardless of whether the individuals have any physical

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impairment. The identified individuals then file lawsuits, in part to avoid the running of limitations triggered by the discovery that they may have an asbestos-related injury. Many of the identified individuals (at least one estimate puts the figure as high as 90 percent of identified individuals) are not experiencing any symptoms of asbestos-related disease and are not suffering from any asbestos-related illness affecting their daily functions.

(g) The crush of asbestos litigation has been costly to employers, employees, litigants, and the court system. In 2003, the American Bar Association Commission on Asbestos Litigation noted that in 1982, the nation's single largest supplier of asbestos-containing insulation products, the Johns-Manville Corporation, 'declared bankruptcy due to the burden of the asbestos litigation.' Since then, more than 70 other companies have declared bankruptcy due to the burden of asbestos litigation. It is estimated that between 60,000 and 128,000 American workers already have lost their jobs as a result of asbestos-related bankruptcies and that eventually 423,000 jobs will be lost due to asbestos-related bankruptcies. Each worker who loses a job due to an asbestos-related bankruptcy loses between \$25,000 and \$50,000 in wages over the worker's career. These workers also have seen the value of their 401(k) retirement plans drop by 25 percent or more due to these bankruptcies.

(h) Additionally, it is estimated that asbestos litigation has already cost over \$54 billion, with well over half of this expense going to attorney's fees and other litigation costs. The crowded dockets that result from the crush of asbestos cases filed by persons who are not functionally or physically impaired by any asbestos-related illness severely hampers the ability of seriously ill claimants to seek redress in the courts. Those claimants who have had their day in court often find that the value of their recovery is seriously reduced when the company against whom the judgment was rendered files bankruptcy due to the weight of asbestos litigation brought by unimpaired claimants.

(i) Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks.

(j) Silica sand is the primary raw material for the production of glass, including container glass (bottles and jars), flat glass (windows), and other forms of glass. Silica sand is used to make foundry molds and cores. Industrial minerals that contain silica are the essential raw materials for the manufacture of ceramics, which include industrial ceramics, sanitary ware (bathrooms), and tableware (plates and cups). Crushed stone and sand and gravel (aggregates), most of which contain crystalline silica, are the primary raw materials in concrete and asphalt; these materials are used in the construction of roads, sidewalks, building foundations, and many other things. Sandstone and granite, both of which contain silica, are used as building materials.

(k) The primary adverse health effect associated with silica is silicosis. Silicosis is a lung disease characterized by fibrosis, or scarring, and is caused by prolonged overexposure to respirable silica through inhalation. Additionally, silica inhaled from occupational sources was classified as a lung carcinogen in 1996.

(l) Silicosis has been recognized as an occupational disease for over 100 years. By the 1930s, the federal government had launched a silica-awareness campaign, which led to greater protection for workers exposed to silica dust. By the early 1970s, the United States Occupational Safety and Health Administration had begun to regulate occupational exposure to respirable silica. In 1999, the United States

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Centers for Disease Control and Prevention/National Institute for Occupational Safety and Health called the reduction in occupational lung diseases, including silicosis, one of the ten great public health achievements of the 20th century. The United States Centers for Disease Control and Prevention/National Institute for Occupational Safety and Health data disclose a substantial decrease in silicosis since 1968 (the first year the data were collected). As a result, the number of silica lawsuits filed each year was relatively predictable through 2001. This trend has changed. The number of new lawsuits alleging silica-related disease being filed each year has risen precipitously in recent years. For example, one of America's largest suppliers of industrial sand had more than 15,000 new claims filed in the first six months of 2003, which is three times the number of claims it had in all of 2002 and more than 10 times the number of claims it had in all of 2001.

(m) Silica claims, like asbestos claims, often arise when an individual is identified as having markings on the individual's lungs that are possibly consistent with silica exposure, but the individual has no functional or physical impairment from any silica-related disease. The identified individuals, like those alleging asbestos-related injury, file lawsuits under the theory that they must do so to avoid having their claims barred by limitations even though they have no current impairment and may never have impairment. It is, therefore, necessary to address silica-related litigation.

(n) It is the purpose of this Act to protect the right of people with impairing asbestos-related and silica-related injuries to pursue their claims for compensation in a fair and efficient manner through the Texas court system, while at the same time preventing scarce judicial and litigant resources from being misdirected by the claims of individuals who have been exposed to asbestos or silica but have no functional or physical impairment from asbestos-related or silica-related disease. To that end, this Act:

(1) adopts medically accepted standards for differentiating between individuals with nonmalignant asbestos-related or silica-related disease causing functional impairment and individuals with no functional impairment;

(2) provides a method to obtain the dismissal of lawsuits in which the exposed person has no functional impairment, while at the same time protecting a person's right to bring suit on discovering an impairing asbestos-related or silica-related injury; and

(3) creates an extended period before limitations begin to run in which to bring claims for injuries caused by the inhalation or ingestion of asbestos or by the inhalation of silica to preserve the right of those who have been exposed to asbestos or silica but are not yet impaired to bring a claim later in the event that they develop an impairing asbestos-related or silica-related disease or injury.

SECTION 2. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 90 to read as follows: **CHAPTER 90. CLAIMS INVOLVING ASBESTOS AND SILICA**

Sec. 90.001. DEFINITIONS. In this chapter:

(1) 'Asbestos' means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

(2) 'Asbestos-related injury' means personal injury or death allegedly caused, in

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whole or in part, by inhalation or ingestion of asbestos.

(3) 'Asbestosis' means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(4) 'Certified B-reader' means a person who has successfully completed the x-ray interpretation course sponsored by the National Institute for Occupational Safety and Health (NIOSH) and passed the B-reader certification examination for x-ray interpretation and whose NIOSH certification is current at the time of any readings required by this chapter.

(5) 'Chest x-ray' means chest films that are taken in accordance with all applicable state and federal regulatory standards and in the posterior-anterior view.

(6) 'Claimant' means an exposed person and any person who is seeking recovery of damages for or arising from the injury or death of an exposed person.

(7) 'Defendant' means a person against whom a claim arising from an asbestos-related injury or a silica-related injury is made.

(8) 'Exposed person' means a person who is alleged to have suffered an asbestos-related injury or a silica-related injury.

(9) 'FEV1' means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(10) 'FVC' means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(11) 'ILO system of classification' means the radiological rating system of the International Labor Office in 'Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses' (2000), as amended.

(12) 'MDL pretrial court' means the district court to which related cases are transferred for consolidated or coordinated pretrial proceedings under Rule 13, Texas Rules of Judicial Administration.

(13) 'MDL rules' means the rules adopted by the supreme court under Subchapter H, Chapter 74, Government Code.

(14) 'Mesothelioma' means a rare form of cancer allegedly caused in some instances by exposure to asbestos in which the cancer invades cells in the membrane lining:

(A) the lungs and chest cavity (the pleural region);

(B) the abdominal cavity (the peritoneal region); or

(C) the heart (the pericardial region).

(15) 'Nonmalignant asbestos-related injury' means an asbestos-related injury other than mesothelioma or other cancer.

(16) 'Nonmalignant silica-related injury' means a silica-related injury other than cancer.

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(17) 'Physician board certified in internal medicine' means a physician who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.

(18) 'Physician board certified in occupational medicine' means a physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine.

(19) 'Physician board certified in oncology' means a physician who is certified in the subspecialty of medical oncology by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.

(20) 'Physician board certified in pathology' means a physician who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Internal Medicine and whose professional practice:

(A) is principally in the field of pathology; and

(B) involves regular evaluation of pathology materials obtained from surgical or postmortem specimens.

(21) 'Physician board certified in pulmonary medicine' means a physician who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.

(22) 'Plethysmography' means the test for determining lung volume, also known as 'body plethysmography,' in which the subject of the test is enclosed in a chamber that is equipped to measure pressure, flow, or volume change.

(23) 'Pulmonary function testing' means spirometry, lung volume, and diffusion capacity testing performed in accordance with Section 90.002 using equipment, methods of calibration, and techniques that meet:

(A) the criteria incorporated in the American Medical Association Guides to the Evaluation of Permanent Impairment and reported in 20 C.F.R. Part 404, Subpart P, Appendix 1, Part (A), Sections 3.00(E) and (F) (2003); and

(B) the interpretative standards in the Official Statement of the American Thoracic Society entitled 'Lung Function Testing: Selection of Reference Values and Interpretative Strategies,' as published in 144 American Review of Respiratory Disease 1202-1218 (1991).

(24) 'Report' means a report required by Section 90.003, 90.004, or 90.010(f)(1).

(25) 'Respirable,' with respect to silica, means particles that are less than 10 microns in diameter.

(26) 'Serve' means to serve notice on a party in compliance with Rule 21a, Texas Rules of Civil Procedure.

(27) 'Silica' means a respirable form of crystalline silicon dioxide, including alpha quartz, cristobalite, and tridymite.

(28) 'Silica-related injury' means personal injury or death allegedly caused, in

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whole or in part, by inhalation of silica.

(29) 'Silicosis' means interstitial fibrosis of the lungs caused by inhalation of silica, including:

(A) acute silicosis, which may occur after exposure to very high levels of silica within a period of months to five years after the initial exposure;

(B) accelerated silicosis; and

(C) chronic silicosis.

Sec. 90.002. PULMONARY FUNCTION TESTING. Pulmonary function testing required by this chapter must be interpreted by a physician:

(1) who is licensed in this state or another state of the United States;

(2) who is board certified in pulmonary medicine, internal medicine, or occupational medicine; and

(3) whose license and certification were not on inactive status at the time the testing was interpreted.

Sec. 90.003. REPORTS REQUIRED FOR CLAIMS INVOLVING ASBESTOS-RELATED INJURY. (a) A claimant asserting an asbestos-related injury must serve on each defendant the following information:

(1) a report by a physician who is board certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology and whose license and certification were not on inactive status at the time the report was made stating that:

(A) the exposed person has been diagnosed with malignant mesothelioma or other malignant asbestos-related cancer; and

(B) to a reasonable degree of medical probability, exposure to asbestos was a cause of the diagnosed mesothelioma or other cancer in the exposed person; or

(2) a report by a physician who is board certified in pulmonary medicine, internal medicine, or occupational medicine and whose license and certification were not on inactive status at the time the report was made that:

(A) verifies that the physician or a medical professional employed by and under the direct supervision and control of the physician:

(i) performed a physical examination of the exposed person, or if the exposed person is deceased, reviewed available records relating to the exposed person's medical condition;

(ii) took a detailed occupational and exposure history from the exposed person or, if the exposed person is deceased, from a person knowledgeable about the alleged exposure or exposures that form the basis of the action; and

(iii) took a detailed medical and smoking history that includes a thorough review of the exposed person's past and present medical problems and their most probable cause;

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(B) sets out the details of the exposed person's occupational, exposure, medical, and smoking history and verifies that at least 10 years have elapsed between the exposed person's first exposure to asbestos and the date of diagnosis;

(C) verifies that the exposed person has:

(i) a quality 1 or 2 chest x-ray that has been read by a certified B-reader according to the ILO system of classification as showing:

(a) bilateral small irregular opacities (s, t, or u) with a profusion grading of 1/1 or higher, for an action filed on or after May 1, 2005;

(b) bilateral small irregular opacities (s, t, or u) with a profusion grading of 1/0 or higher, for an action filed before May 1, 2005; or

(c) bilateral diffuse pleural thickening graded b2 or higher including blunting of the costophrenic angle; or

(ii) pathological asbestosis graded 1(B) or higher under the criteria published in 'Asbestos-Associated Diseases,' 106 Archives of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982);

(D) verifies that the exposed person has asbestos-related pulmonary impairment as demonstrated by pulmonary function testing showing:

(i) forced vital capacity below the lower limit of normal or below 80 percent of predicted and FEV1/FVC ratio (using actual values) at or above the lower limit of normal or at or above 65 percent; or

(ii) total lung capacity, by plethysmography or timed gas dilution, below the lower limit of normal or below 80 percent of predicted;

(E) verifies that the physician has concluded that the exposed person's medical findings and impairment were not more probably the result of causes other than asbestos exposure revealed by the exposed person's occupational, exposure, medical, and smoking history; and

(F) is accompanied by copies of all ILO classifications, pulmonary function tests, including printouts of all data, flow volume loops, and other information demonstrating compliance with the equipment, quality, interpretation, and reporting standards set out in this chapter, lung volume tests, diagnostic imaging of the chest, pathology reports, or other testing reviewed by the physician in reaching the physician's conclusions.

(b) The detailed occupational and exposure history required by Subsection (a) (2) (A) (ii) must describe:

(1) the exposed person's principal employments and state whether the exposed person was exposed to airborne contaminants, including asbestos fibers and other dusts that can cause pulmonary impairment; and

(2) the nature, duration, and frequency of the exposed person's exposure to airborne contaminants, including asbestos fibers and other dusts that can cause pulmonary impairment.

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(c) If a claimant's pulmonary function test results do not meet the requirements of Subsection (a)(2)(D)(i) or (ii), the claimant may serve on each defendant a report by a physician who is board certified in pulmonary medicine, internal medicine, or occupational medicine and whose license and certification were not on inactive status at the time the report was made that:

(1) verifies that the physician has a physician-patient relationship with the exposed person;

(2) verifies that the exposed person has a quality 1 or 2 chest x-ray that has been read by a certified B-reader according to the ILO system of classification as showing bilateral small irregular opacities (s, t, or u) with a profusion grading of 2/1 or higher;

(3) verifies that the exposed person has restrictive impairment from asbestosis and includes the specific pulmonary function test findings on which the physician relies to establish that the exposed person has restrictive impairment;

(4) verifies that the physician has concluded that the exposed person's medical findings and impairment were not more probably the result of causes other than asbestos exposure revealed by the exposed person's occupational, exposure, medical, and smoking history; and

(5) is accompanied by copies of all ILO classifications, pulmonary function tests, including printouts of all data, flow volume loops, and other information demonstrating compliance with the equipment, quality, interpretation, and reporting standards set out in this chapter, lung volume tests, diagnostic imaging of the chest, pathology reports, or other testing reviewed by the physician in reaching the physician's conclusions.

(d) If a claimant's radiologic findings do not meet the requirements of Subsection (a)(2)(C)(i), the claimant may serve on each defendant a report by a physician who is board certified in pulmonary medicine, internal medicine, or occupational medicine and whose license and certification were not on inactive status at the time the report was made that:

(1) verifies that the physician has a physician-patient relationship with the exposed person;

(2) verifies that the exposed person has asbestos-related pulmonary impairment as demonstrated by pulmonary function testing showing:

(A) either:

(i) forced vital capacity below the lower limit of normal or below 80 percent of predicted and total lung capacity, by plethysmography, below the lower limit of normal or below 80 percent of predicted; or

(ii) forced vital capacity below the lower limit of normal or below 80 percent of predicted and FEV1/FVC ratio (using actual values) at or above the lower limit of normal or at or above 65 percent; and

(B) diffusing capacity of carbon monoxide below the lower limit of normal or below 80 percent of predicted;

(3) verifies that the exposed person has a computed tomography scan or high-

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resolution computed tomography scan showing either bilateral pleural disease or bilateral parenchymal disease consistent with asbestos exposure;

(4) verifies that the physician has concluded that the exposed person's medical findings and impairment were not more probably the result of causes other than asbestos exposure as revealed by the exposed person's occupational, exposure, medical, and smoking history; and

(5) is accompanied by copies of all computed tomography scans, ILO classifications, pulmonary function tests, including printouts of all data, flow volume loops, and other information demonstrating compliance with the equipment, quality, interpretation, and reporting standards set out in this chapter, lung volume tests, diagnostic imaging of the chest, pathology reports, or other testing reviewed by the physician in reaching the physician's conclusions.

Sec. 90.004. REPORTS REQUIRED FOR CLAIMS INVOLVING SILICA-RELATED INJURY. (a) A claimant asserting a silica-related injury must serve on each defendant a report by a physician who is board certified in pulmonary medicine, internal medicine, oncology, pathology, or, with respect to a claim for silicosis, occupational medicine and whose license and certification were not on inactive status at the time the report was made that:

(1) verifies that the physician or a medical professional employed by and under the direct supervision and control of the physician:

(A) performed a physical examination of the exposed person, or if the exposed person is deceased, reviewed available records relating to the exposed person's medical condition;

(B) took a detailed occupational and exposure history from the exposed person or, if the exposed person is deceased, from a person knowledgeable about the alleged exposure or exposures that form the basis of the action; and

(C) took a detailed medical and smoking history that includes a thorough review of the exposed person's past and present medical problems and their most probable cause;

(2) sets out the details of the exposed person's occupational, exposure, medical, and smoking history;

(3) verifies that the exposed person has one or more of the following:

(A) a quality 1 or 2 chest x-ray that has been read by a certified B-reader according to the ILO system of classification as showing:

(i) bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, with a profusion grading of 1/1 or higher, for an action filed on or after May 1, 2005; or

(ii) bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, with a profusion grading of 1/0 or higher, for an action filed before May 1, 2005;

(B) pathological demonstration of classic silicotic nodules exceeding one centimeter in diameter as published in 'Diseases Associated with Exposure to Silica and Nonfibrous Silicate Minerals,' 112 Archives of Pathology and Laboratory

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(C) progressive massive fibrosis radiologically established by large opacities greater than one centimeter in diameter; or

(D) acute silicosis; and

(4) is accompanied by copies of all ILO classifications, pulmonary function tests, including printouts of all data, flow volume loops, and other information demonstrating compliance with the equipment, quality, interpretation, and reporting standards set out in this chapter, lung volume tests, diagnostic imaging of the chest, pathology reports, or other testing reviewed by the physician in reaching the physician's conclusions.

(b) If the claimant is asserting a claim for silicosis, the report required by Subsection (a) must also verify that:

(1) there has been a sufficient latency period for the applicable type of silicosis;

(2) the exposed person has at least Class 2 or higher impairment due to silicosis, according to the American Medical Association Guides to the Evaluation of Permanent Impairment and reported in 20 C.F.R. Part 404, Subpart P, Appendix 1, Part (A), Sections 3.00(E) and (F) (2003); and

(3) the physician has concluded that the exposed person's medical findings and impairment were not more probably the result of causes other than silica exposure revealed by the exposed person's occupational, exposure, medical, and smoking history.

(c) If the claimant is asserting a claim for silica-related lung cancer, the report required by Subsection (a) must also:

(1) include a diagnosis that the exposed person has primary lung cancer and that inhalation of silica was a substantial contributing factor to that cancer; and

(2) verify that at least 15 years have elapsed from the date of the exposed person's first exposure to silica until the date of diagnosis of the exposed person's primary lung cancer.

(d) If the claimant is asserting a claim for any disease other than silicosis and lung cancer alleged to be related to exposure to silica, the report required by Subsection (a) must also verify that the physician has diagnosed the exposed person with a disease other than silicosis or silica-related lung cancer and has concluded that the exposed person's disease is not more probably the result of causes other than silica exposure.

(e) The detailed occupational and exposure history required by Subsection (a)(1)(B) must describe:

(1) the exposed person's principal employments and state whether the exposed person was exposed to airborne contaminants, including silica and other dusts that can cause pulmonary impairment; and

(2) the nature, duration, and frequency of the exposed person's exposure to airborne contaminants, including silica and other dusts that can cause pulmonary

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impairment.

Sec. 90.005. PROHIBITED BASIS FOR DIAGNOSIS. (a) For purposes of this chapter, a physician may not, as the basis for a diagnosis, rely on the reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the exposed person's medical condition that was conducted in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted.

(b) If a physician relies on any information in violation of Subsection (a), the physician's opinion or report does not comply with the requirements of this chapter.

Sec. 90.006. SERVING REPORTS. (a) In an action filed on or after the date this chapter becomes law, a report prescribed by Section 90.003 or 90.004 must be served on each defendant not later than the 30th day after the date that defendant answers or otherwise enters an appearance in the action.

(b) In an action pending on the date this chapter becomes law and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, commences on or before the 90th day after the date this chapter becomes law, a claimant is not required to serve a report on any defendant unless a mistrial, new trial, or retrial is subsequently granted or ordered.

(c) In an action pending on the date this chapter becomes law and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, commences after the 90th day after the date this chapter becomes law, a report must be served on each defendant on or before the earlier of the following dates:

- (1) the 60th day before trial commences; or
- (2) the 180th day after the date this chapter becomes law.

Sec. 90.007. MOTION TO DISMISS. (a) In an action filed on or after the date this chapter becomes law, if a claimant fails to timely serve a report on a defendant, or serves on the defendant a report that does not comply with the requirements of Section 90.003 or 90.004, the defendant may file a motion to dismiss the claimant's asbestos-related claims or silica-related claims. The motion must be filed on or before the 30th day after the date the report is served on the defendant. If a claimant fails to serve a report on the defendant, the motion must be filed on or before the 30th day after the date the report was required to be served on the defendant under Section 90.006. If the basis of the motion is that the claimant has served on the defendant a report that does not comply with Section 90.003 or 90.004, the motion must include the reasons why the report does not comply with that section.

(b) A claimant may file a response to a motion to dismiss on or before the 15th day after the date the motion to dismiss is served. A report required by Section 90.003 or 90.004 may be filed, amended, or supplemented within the time required for responding to a motion to dismiss. The service of an amended or supplemental report does not require the filing of an additional motion to dismiss if the reasons stated in the original motion to dismiss are sufficient to require dismissal under this chapter.

(c) Except as provided by Section 90.010(d) or (e), if the court is of the opinion that a motion to dismiss is meritorious, the court shall, by written order, grant

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the motion and dismiss all of the claimant's asbestos-related claims or silica-related claims, as appropriate, against the defendant. A dismissal under this section is without prejudice to the claimant's right, if any, to assert claims for an asbestos-related injury or a silica-related injury in a subsequent action.

(d) On the filing of a motion to dismiss under this section, all further proceedings in the action are stayed until the motion is heard and determined by the court.

(e) On the motion of a party showing good cause, the court may shorten or extend the time limits provided in this section for filing or serving motions, responses, or reports.

Sec. 90.008. VOLUNTARY DISMISSAL. Before serving a report required by Section 90.003 or 90.004, a claimant seeking damages arising from an asbestos-related injury or silica-related injury may voluntarily dismiss the claimant's action. If a claimant files a voluntary dismissal under this section, the claimant's voluntary dismissal is without prejudice to the claimant's right to file a subsequent action seeking damages arising from an asbestos-related injury or a silica-related injury.

Sec. 90.009. JOINDER OF CLAIMANTS. Unless all parties agree otherwise, claims relating to more than one exposed person may not be joined for a single trial.

Sec. 90.010. MULTIDISTRICT LITIGATION PROCEEDINGS. (a) The MDL rules apply to any action pending on the date this chapter becomes law in which the claimant alleges personal injury or death from exposure to asbestos or silica unless:

(1) the action was filed before September 1, 2003, and trial has commenced or is set to commence on or before the 90th day after the date this chapter becomes law, except that the MDL rules shall apply to the action if the trial does not commence on or before the 90th day after the date this chapter becomes law;

(2) the action was filed before September 1, 2003, and the claimant serves a report that complies with Section 90.003 or 90.004 on or before the 90th day after the date this chapter becomes law; or

(3) the action was filed before September 1, 2003, and the exposed person has been diagnosed with malignant mesothelioma, other malignant asbestos-related cancer, or malignant silica-related cancer.

(b) If the claimant fails to serve a report complying with Section 90.003 or 90.004 on or before the 90th day after the date this chapter becomes law under Subsection (a)(2), the defendant may file a notice of transfer to the MDL pretrial court. If the MDL pretrial court determines that the claimant served a report that complies with Section 90.003 or 90.004 on or before the 90th day after the date this chapter becomes law, the MDL pretrial court shall remand the action to the court in which the action was filed. If the MDL pretrial court determines that the report was not served on or before the 90th day after the date this chapter becomes law or that the report served does not comply with Section 90.003 or 90.004, the MDL pretrial court shall retain jurisdiction over the action pursuant to the MDL rules.

(c) In an action transferred to an MDL pretrial court in which the exposed person is living and has been diagnosed with malignant mesothelioma, other malignant asbestos-related cancer, malignant silica-related cancer, or acute silicosis, the MDL pretrial court shall expedite the action in a manner calculated to provide the exposed person with a trial or other disposition in the shortest period that is

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fair to all parties and consistent with the principles of due process. The MDL pretrial court should, as far as reasonably possible, ensure that such action is brought to trial or final disposition within six months from the date the action is transferred to the MDL pretrial court, provided that all discovery and case management requirements of the MDL pretrial court have been satisfied.

(d) In an action pending on the date this chapter becomes law that is transferred to or pending in an MDL pretrial court and in which the claimant does not serve a report that complies with Section 90.003 or 90.004, the MDL pretrial court shall not dismiss the action pursuant to this chapter but shall retain jurisdiction over the action under the MDL rules. The MDL pretrial court shall not remand such action for trial unless:

- (1) the claimant serves a report complying with Section 90.003 or 90.004; or
- (2) (A) the claimant does not serve a report that complies with Section 90.003 or 90.004;
- (B) the claimant serves a report complying with Subsection (f)(1); and
- (C) the court, on motion and hearing, makes the findings required by Subsection (f)(2).

(e) In an action filed on or after the date this chapter becomes law that is transferred to an MDL pretrial court and in which the claimant does not serve on a defendant a report that complies with Section 90.003 or 90.004, the MDL pretrial court shall, on motion by a defendant, dismiss the action under Section 90.007 unless:

- (1) the claimant serves a report that complies with Subsection (f)(1); and
- (2) the court, on motion and hearing, makes the findings required by Subsection (f)(2).

(f) In an action in which the claimant seeks remand for trial under Subsection (d)(2) or denial of a motion to dismiss under Subsection (e):

- (1) the claimant shall serve on each defendant a report that:
 - (A) complies with the requirements of Sections 90.003(a)(2)(A), (B), (E), and (F) and 90.003(b) or Sections 90.004(a)(1), (2), and (4) and 90.004(e); and
 - (B) verifies that:

(i) the physician making the report has a physician-patient relationship with the exposed person;

(ii) pulmonary function testing has been performed on the exposed person and the physician making the report has interpreted the pulmonary function testing;

(iii) the physician making the report has concluded, to a reasonable degree of medical probability, that the exposed person has radiographic, pathologic, or computed tomography evidence establishing bilateral pleural disease or bilateral parenchymal disease caused by exposure to asbestos or silica; and

(iv) the physician has concluded that the exposed person has asbestos-related or

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silica-related physical impairment comparable to the impairment the exposed person would have had if the exposed person met the criteria set forth in Section 90.003 or 90.004; and

(2) the MDL pretrial court shall determine whether:

(A) the report and medical opinions offered by the claimant are reliable and credible;

(B) due to unique or extraordinary physical or medical characteristics of the exposed person, the medical criteria set forth in Sections 90.003 and 90.004 do not adequately assess the exposed person's physical impairment caused by exposure to asbestos or silica; and

(C) the claimant has produced sufficient credible evidence for a finder of fact to reasonably find that the exposed person is physically impaired as the result of exposure to asbestos or silica to a degree comparable to the impairment the exposed person would have had if the exposed person met the criteria set forth in Section 90.003 or 90.004.

(g) A court's determination under Subsection (f) shall be made after conducting an evidentiary hearing at which the claimant and any defendant to the action may offer supporting or controverting evidence. The parties shall be permitted a reasonable opportunity to conduct discovery before the evidentiary hearing.

(h) The court shall state its findings under Subsection (f)(2) in writing and shall address in its findings:

(1) the unique or extraordinary physical or medical characteristics of the exposed person that justify the application of this section; and

(2) the reasons the criteria set forth in Sections 90.003 and 90.004 do not adequately assess the exposed person's physical impairment caused by exposure to asbestos or silica.

(i) Any findings made by a court under Subsection (f) are not admissible for any purpose at a trial on the merits.

(j) Subsections (d)(2) and (e)-(i) apply only in exceptional and limited circumstances in which the exposed person does not satisfy the medical criteria of Section 90.003 or 90.004 but can demonstrate meaningful asbestos-related or silica-related physical impairment that satisfies the requirements of Subsection (f). Subsections (d)(2) and (e)-(i) have limited application and shall not be used to negate the requirements of this chapter.

(k) On or before September 1, 2010, each MDL pretrial court having jurisdiction over cases to which this chapter applies shall deliver a report to the governor, lieutenant governor, and the speaker of the house of representatives stating:

(1) the number of cases on the court's multidistrict litigation docket as of August 1, 2010;

(2) the number of cases on the court's multidistrict litigation docket as of August 1, 2010, that do not meet the criteria of Section 90.003 or 90.004, to the extent known;

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(3) the court's evaluation of the effectiveness of the medical criteria established by Sections 90.003 and 90.004;

(4) the court's recommendation, if any, as to how medical criteria should be applied to the cases on the court's multidistrict litigation docket as of August 1, 2010; and

(5) any other information regarding the administration of cases in the MDL pretrial courts that the court deems appropriate.

Sec. 90.011. BANKRUPTCY. Nothing in this chapter is intended to affect the rights of any party in a bankruptcy proceeding or affect the ability of any person to satisfy the claim criteria for compensable claims or demands under a trust established pursuant to a plan of reorganization under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. Section 1101 et seq.).

Sec. 90.012. SUPREME COURT RULEMAKING. The supreme court may promulgate amendments to the Texas Rules of Civil Procedure regarding the joinder of claimants in asbestos-related actions or silica-related actions if the rules are consistent with Section 90.009.

SECTION 3. Subsection (a), Section 16.003, Civil Practice and Remedies Code, is amended to read as follows:

(a) Except as provided by Sections 16.010, ~~16.0031~~, and 16.0045, a person must bring suit for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer not later than two years after the day the cause of action accrues.

SECTION 4. Subchapter A, Chapter 16, Civil Practice and Remedies Code, is amended by adding Section 16.0031 to read as follows:

Sec. 16.0031. ASBESTOS-RELATED OR SILICA-RELATED INJURIES. (a) In an action for personal injury or death resulting from an asbestos-related injury, as defined by Section 90.001, the cause of action accrues for purposes of Section 16.003 on the earlier of the following dates:

- (1) the date of the exposed person's death; or
- (2) the date that the claimant serves on a defendant a report complying with Section 90.003 or 90.010(f).

(b) In an action for personal injury or death resulting from a silica-related injury, as defined by Section 90.001, the cause of action accrues for purposes of Section 16.003 on the earlier of the following dates:

- (1) the date of the exposed person's death; or
- (2) the date that the claimant serves on a defendant a report complying with Section 90.004 or 90.010(f).

SECTION 5. Subsection (a), Section 51.014, Civil Practice and Remedies Code, is amended to read as follows:

(a) A person may appeal from an interlocutory order of a district court, county

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court at law, or county court that:

- (1) appoints a receiver or trustee;
- (2) overrules a motion to vacate an order that appoints a receiver or trustee;
- (3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;
- (4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;
- (5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;
- (6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution, or Chapter 73;
- (7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code;
- (8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;
- (9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351; ~~or~~
- (10) grants relief sought by a motion under Section 74.351(1), ~~or~~
- (11) denies a motion to dismiss filed under Section 90.007.

SECTION 6. Subsection (d), Section 22.225, Government Code, is amended to read as follows:

(d) A petition for review is allowed to the supreme court for an appeal from an interlocutory order described by Section 51.014(a)(3), ~~or~~ (6), ~~or~~ (11), Civil Practice and Remedies Code.

SECTION 7. Subsection (a), Section 23.101, Government Code, is amended to read as follows:

(a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

- (1) temporary injunctions;
- (2) criminal actions, with the following actions given preference over other criminal actions:

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- (A) criminal actions against defendants who are detained in jail pending trial;
- (B) criminal actions involving a charge that a person committed an act of family violence, as defined by Section 71.004, Family Code; and
- (C) an offense under:
 - (i) Section 21.11, Penal Code;
 - (ii) Chapter 22, Penal Code, if the victim of the alleged offense is younger than 17 years of age;
 - (iii) Section 25.02, Penal Code, if the victim of the alleged offense is younger than 17 years of age; or
 - (iv) Section 25.06, Penal Code;
- (3) election contests and suits under the Election Code;
- (4) orders for the protection of the family under Subtitle B, Title 4, Family Code;
- (5) appeals of final rulings and decisions of the Texas Workers' Compensation Commission and claims under the Federal Employers' Liability Act and the Jones Act; and
- (6) appeals of final orders of the commissioner of the General Land Office under Section 51.3021, Natural Resources Code, and
- (7) actions in which the claimant has been diagnosed with malignant mesothelioma, other malignant asbestos-related cancer, malignant silica-related cancer, or acute silicosis.

SECTION 8. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.53X to read as follows:

Art. 21.53X. PROHIBITED PRACTICES RELATED TO EXPOSURE TO ASBESTOS OR SILICA. (a) In this article, 'health benefit plan' means a plan that provides benefits for medical, surgical, or other treatment expenses incurred as a result of a health condition, a mental health condition, an accident, sickness, or substance abuse, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document. The term includes:

- (1) a small employer health benefit plan or a health benefit plan written to provide coverage with a cooperative under Chapter 26 of this code;
- (2) a standard health benefit plan offered under Article 3.80 of this code or Section 9N, Texas Health Maintenance Organization Act (Article 20A.09N, Vernon's Texas Insurance Code); and
- (3) a health benefit plan offered under Chapter 1551, 1575, 1579, or 1601 of this code.

(b) This article applies to any entity that offers a health benefit plan or an annuity or life insurance policy or contract in this state, including:

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- (1) a stock or mutual life, health, or accident insurance company;
 - (2) a group hospital service corporation operating under Chapter 842 of this code;
 - (3) a fraternal benefit society operating under Chapter 885 of this code;
 - (4) a stipulated premium insurance company operating under Chapter 884 of this code;
 - (5) a Lloyd's plan operating under Chapter 941 of this code;
 - (6) an exchange operating under Chapter 942 of this code;
 - (7) a health maintenance organization operating under Chapter 843 of this code;
 - (8) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846 of this code;
 - (9) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844 of this code;
 - (10) a statewide mutual assessment company operating under Chapter 881 of this code;
 - (11) a local mutual aid association operating under Chapter 886 of this code; and
 - (12) a local mutual burial association operating under Chapter 888 of this code.
- (c) An entity that offers a health benefit plan or an annuity or life insurance policy or contract may not use the fact that a person has been exposed to asbestos fibers or silica or has filed a claim governed by Chapter 90, Civil Practice and Remedies Code, to reject, deny, limit, cancel, refuse to renew, increase the premiums for, or otherwise adversely affect the person's eligibility for or coverage under the policy or contract.

SECTION 9. (a) Sections 90.009 and 16.0031, Civil Practice and Remedies Code, as added by this Act, apply to an action commenced on or after the effective date of this Act or pending on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced on or before the effective date of this Act. An action commenced before the effective date of this Act in which trial has commenced on or before the effective date of this Act or in which there has been a final, unappealable disposition by order, judgment, voluntary dismissal, or otherwise is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose. Section 16.0031, Civil Practice and Remedies Code, as added by this Act, shall not operate to revive any claims that are barred by application of the law in effect immediately before the effective date of this Act.

(b) Article 21.53X, Insurance Code, as added by this Act, applies only to a health benefit plan or an annuity or life insurance policy or contract delivered, issued for delivery, or renewed on or after the effective date of this Act. A health benefit plan or an annuity or life insurance policy or contract delivered, issued for delivery, or renewed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

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SECTION 10. There is a direct appeal to the supreme court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of this Act. The direct appeal is an accelerated appeal.

SECTION 11. Section 90.007, Civil Practice and Remedies Code, as added by this Act, allowing the dismissal of claims for failing to serve reports complying with the requirements of Sections 90.003 and 90.004, Civil Practice and Remedies Code, Subsection (d), Section 90.010, Civil Practice and Remedies Code, as added by this Act, setting standards for certain cases to be remanded for trial from MDL pretrial courts, and Section 16.0031, Civil Practice and Remedies Code, as added by this Act, relating to the limitations period for asbestos-related and silica-related causes of action, are not severable, and none of those sections would have been enacted without the others. If any of those provisions are held invalid, all of those provisions are invalid. If any other provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act, and to this end the provisions of this Act, other than Section 90.007, Subsection (d), Section 90.010, and Section 16.0031, Civil Practice and Remedies Code, as added by this Act, are declared severable.

SECTION 12. This Act takes effect September 1, 2005.

Senate Speaker of the House _____ President of the

I hereby certify that S.B. No. 15 passed the Senate on April 27, 2005, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 16, 2005, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 15 passed the House, with amendment, on May 11, 2005, by a non-record vote.

Chief Clerk of the House

Approved:

Date _____

Governor

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